

LLOYD K. JOHNSON

IBLA 70-333

Decided October 12, 1970

Mineral Lands: Prospecting Permits

An application for a present fractional interest hardrock prospecting permit for lands in a national forest filed under Reorganization Plan No. 3 of 1946 is properly rejected as to land in which the United States does not acquire any mineral interest until 1985.

1 IBLA 64

IBLA 70-333 : M 11465 (Minnesota)

LLOYD K. JOHNSON : Hardrock prospecting permit

: application rejected

: Affirmed, as modified

APPEAL FROM MONTANA LAND OFFICE  
BUREAU OF LAND MANAGEMENT

Lloyd K. Johnson has appealed to the Director, Bureau of Land Management, 1/ from a decision dated January 9, 1969, whereby the Chief, Branch of Minerals, Montana land office, rejected his application M 11465 (Minnesota) for a present fractional interest hardrock prospecting permit on acquired land of the United States described as NE 1/4 SW 1/4 section 30, T. 62 N., R. 10 W., 4th P.M., Minnesota, within the Superior National Forest. The reason for the rejection by the land office was that Johnson had not shown a present interest in the fractional mineral interest in the land not owned by the United States. The application was filed under Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1099. 2/

The land office decision was based upon an earlier title report which indicated that the United States had acquired title to a 95% interest in the metallic minerals in this tract.

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1/ The Secretary of the Interior, in the exercise of his supervisory authority, transferred jurisdiction over all appeals pending before the Director, Bureau of Land Management, to the Board of Land Appeals, effective July 1, 1970. Circular 2273, 35 F.R. 10009, 10012.

2/ The mineral leasing authority of the Secretary of Agriculture with respect to lands acquired for National Forest purposes was transferred to the Secretary of the Interior under the provisions of Reorganization Plan No. 3 of 1946, *supra*.

We have now been advised by the Forest Service, U.S. Department of Agriculture, that review of the abstract of title discloses that title to the subject 40-acre parcel was acquired by the United States in a condemnation suit. The final judgment in the action indicates that all metallic mineral rights in the NE 1/4 SW 1/4 section 30, T. 62 N., R. 10 W., were reserved to Josiah M. Vale for a period of 50 years from February 27, 1935. Since the United States did not take any present mineral interest in this tract through the condemnation, the mineral interest remains vested in the said Josiah M. Vale, his heirs or assigns, until February 27, 1985.

As the United States does not own the mineral rights for which the present interest prospecting permit is sought, the application of Johnson must be rejected. The regulation also provides that an application for a future interest lease filed less than one year prior to the date of vesting in the United States of the present mineral title must be rejected. 43 CFR 3550.3-3 (35 F.R. 9719). Cf. Nicholas D. Olivier, A-30043 (June 3, 1964).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed as modified.

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Edward W. Stuebing, Member

I concur.    I concur.

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Anne P. Lewis, Member

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Martin Ritvo, Member

